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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 694

E. H. ALBRECHT, *et al.*,
Petitioners,

vs.

INDIANA HARBOR BELT RAILROAD COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND SUPPORTING BRIEF.

JOHN H. GATELY,
Counsel for Petitioners.

JOSEPH F. BURNS,
Of Counsel.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, The Supreme Court of the United States:

Your Petitioners, E. H. Albrecht, and others, respectfully represent that they are aggrieved by the final judgment of the United States Court of Appeals for the Seventh Circuit, entered December 20, 1949, (R. 26) affirming the judgment of the District Court of the United States for the Northern District of Indiana, Hammond Division, dismissing, on motion, the Complaint filed by these Petitioners (R. 1).

A.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

In the Complaint filed in the District Court of the United States for the Northern District of Indiana, Hammond Division, on the 4th day of August, 1947 (R. 1) the Petitioners alleged diversity of citizenship and sought recovery of damages for violation of the labor agreement entered into by the defendant and the Brotherhood of Railroad Trainmen on behalf of Petitioners, who are members of the Brotherhood. The Petitioners claim a violation of the labor agreement by the Respondent based upon a breach of Article VII (R. 7) of said agreement, wherein the respondent agreed to provide a foreman and two helpers as a regular yard crew in their switching yard in the Chicago switching district. The Respondent did not provide the number of men specified. The respondent's main office is in Hammond, Indiana, and the suit was therefore brought in the District Court in Indiana.

The violations of said agreement originated August 13, 1926, and continued through December 12, 1938. The Complaint charges that by reason of the Respondent's failure to provide a full crew, as specified in said agreement, the Petitioners were prevented from working said period and they thereby lost a day's pay for each day that the railroad continued said violation of said agreement.

That in conformance with said agreement, Article XXIV thereof (R. 7) the Petitioners and the officials of their local brotherhood lodge, in accordance with the National Railway Labor Act and said agreement, presented their grievances for said violation and claims for pay for said period;

that said claims were negotiated by the proper officials of their Brotherhood, with the proper officials of the Respondent, without satisfaction, from September 24, 1926, and because of their failure to adjust their differences, a Petition was filed with the Board of Adjustment, and lapsed with the expiration of said Board.

Count 2 of the Complaint (R. 5) states that the Respondent, by reason of its failure to abide by Article VII *supra,* required some of Petitioners to perform two assignments of work on several days they worked and they were therefore required to work a longer period of time on their shifts than scheduled, and only received pay for the work done on one shift, and that they are therefore entitled, under said agreement, to an additional day's pay, in accordance with Article II, Sub. Par. (b) (R. 6). The Respondent filed a Motion to Dismiss (R. 10) and challenged the sufficiency of the Complaint, and among other things, set out their objections that the action was not commenced within the six (6) year Statute of Limitations of Indiana, contending that the claims were predicated upon an oral, rather than a written contract.

Briefs were filed and oral arguments were held and Petitioners objected to the inclusion of the plea of the Statute of Limitations in a motion to dismiss, which was overruled.

On December 16, 1948, the trial court entered its memorandum of opinion (R. 11) and its order of dismissal (R. 14). The whole opinion was based upon the Court's assumption that the plea of the Statute of Limitations is properly cognizable in a motion to dismiss, and that the contract of employment was not a written contract (R. 14).

B.

STATEMENT OF THE BASIS UPON WHICH IT IS CONTENDED THAT THIS COURT HAS JURISDICTION TO REVERSE THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The jurisdiction of this Court to grant a Petition for a writ of certiorari is invoked under Section 1254 of the Judicial Code, as amended by the Act of September 1, 1948 (28 USCA 1254).

The time for filing this Petition for a writ of certiorari begins from the date of the final decision, viz. December 20, 1949.

The Opinion of the Court of Appeals, and the decision thereon misapplies the correct interpretation given to contracts between Labor Unions and employers, as handed down by the highest courts of the State of Illinois, and misapplies such fallacious conclusions to the contract involved in this case. They also, in said decision, failed to take into consideration the provisions of the National Railway Labor Act, which require long negotiation between the representatives of the employees, the Petitioners herein, and the duly constituted officials of the Railroad, Respondent herein. They have also failed to take cognizance of, and recognize opinions of other United States Courts of Appeal in other cases involving interpretation of identical labor contracts, which have held the same to be written contracts, and have applied the Statute of Limitations of Indiana on oral contracts to this action, instead of the Statutes of Limitations of Indiana governing contracts.

The issues in this case necessitate a construction of the Railway Labor Act and the intent and purpose of Congress in enacting the same. By this decision they have gone directly opposite to the expressed opinion of this court in similar cases.

The question as to whether or not valid and subsisting negotiated collective bargaining agreements entered into by and between the duly constituted representatives of employees with the officials of the Railroad shall be treated as *nudum pactums* requiring no more consideration than a nod of the head, or whether they should be given their true value, as this Court in some of its opinions has so aptly stated they should be treated as treaties and accorded recognition with solemnity due them, must be passed upon by this court.

If the decision of the Court of Appeals in this case is not reversed, collective bargaining will be held for naught, and the whole structure of the Railway Labor Act will be destroyed and its full intent and purpose as enunciated by Congress under the Act, and as interpreted by this Court, will be a nullity. Railroads will find it impossible to conduct their operations, and employees will know that they cannot proceed with their bargaining processes set up by the Railway Labor Act, for to do so would jeopardize their rights to final appeal to the courts.

This court should exercise its jurisdiction by granting this Petition for writ of certiorari, not merely to determine whether the Court of Appeals improperly applied the formal principles, as enunciated by the Railway Labor Act, but also to correct them in their mis-application of stated State Law, and for the purpose of pronouncing legal principles that should be applied by all courts in the land with regard to controversial rights contained in collective bargaining agreements. The question presented by this Petition relates to the basic principles that should be ap-

plied by courts generally when negotiated collective bargaining agreements, upon which this action is based, are brought into court to prevent the complete nullification of the intent and spirit of the Railway Labor Act. The question is substantially clear, urgent and extremely important to hundreds of thousands of men who are now working under what they consider written contracts, which the Court of Appeals has perfunctorily labeled oral contracts and denied them right of redress they thought assured thereunder. This should be finally determined by this Court by granting this Petition for a writ of certiorari.

C.

THE QUESTIONS PRESENTED.

The questions presented, we respectfully submit, have been enunciated in the previous section, and which might be stated more succinctly, as whether or not negotiated collective bargaining agreements entered into between the representatives of the men and the duly constituted officials of the employer, and formally reduced to writing and signed by the representatives, are written or oral agreements insofar as the Statute of Limitations is to be applied by the Courts in actions brought for breach of any of the provisions of said agreements.

D.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

The decision of the Court of Appeals in this case conflicts with the decision of this Court, and of other Courts of Appeals. There should be uniformity of decision relating to the interpretation of these collective bargaining agreements. Their worth and status should be clear and certain. The rights and liabilities of thousands of men and hundreds of companies are dependent upon the final determination of this Court of the issues presented and should be resolved by this Court by granting this Petition for writ of certiorari.

Respectfully submitted,

E. H. ALBRECHT, *et al.*,
Petitioners,

JOHN H. GATELY,
Counsel for Petitioners.

JOSEPH F. BURNS,
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INDIANA HARBOR BELT RAILROAD COMPANY,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

REPORT OF OPINION.

The opinion of the Court of Appeals (R. 26) is reported in 178 F. 2nd 577.

II.

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

The grounds are more particularly set forth in Paragraph B of the preceding Petition.

III.

STATEMENT OF THE CASE.

The concise statement of the case is made in the preceding Petition under Paragraph A.

IV.

SPECIFICATION OF ERRORS ASSIGNED AND INTENDED TO BE URGED.

The Court of Appeals erred:

1. In affirming the judgment of the District Court.

2. In not reversing the judgment of the District Court in favor of your Petitioners.

3. In holding that the Statute of Limitations can be passed upon in a motion to dismiss.

4. In rendering its decision that collective bargaining agreements entered into by and between the duly constituted officials of the Brotherhood of Railroad Trainmen, and the officers of the Railroad, Respondents herein, which have been formally reduced to writing and signed by the parties, are oral contracts and the Statute of Limitations pertaining to oral contracts applies thereto.

V.

ARGUMENT.

A.

The Plea of the Statute of Limitations Should Not be Considered Under a Motion to Dismiss.

The Court of Appeals has erroneously found that a plea of a Statute of Limitations can properly be considered under a motion to dismiss and found that on the face of the pleadings it is obvious that the action was brought after the running of the statute. In this particular case there are eleven (11) Petitioners who were in the armed services of the United States, Army or Navy, and under the Soldiers and Sailors Relief Act of 1940, and the amendments thereof, Section 205, excludes the period of military service from computing time under existing or future Statutes of Limitation.

We respectfully submit that this evidence cannot be brought out on a motion to dismiss, and that therefore the only proper way, as set forth through the years, of raising a Statute of Limitations is by plea so that a reply may be made and questions that might have tolled the statute, which do not appear on the face of the complaint, can be raised.

We respectfully submit, therefore, that the decision of the Court of Appeals on this matter must be reversed.

B.

The Decision of the Court of Appeals Conflicts With the Decisions of This Court and Other Courts of Appeal.

Most recently this Court, in *Order of Conductors* v. *Pitney,* 326 U. S. 561 (at page 569, Note 2), has recognized that a similar collective bargaining agreement is a written contract; so, too, in *H. J. Heinz Co.* v. *N. L. R. B.,* 311 U. S. 514, wherein they state at page 525:

> "We think that Congress in their incorporating in the new legislation the collective bargaining requirement of the earlier statute, included as a part of it the signed agreement long recognized under the earlier acts as the final step in the bargaining process."

And many other similar cases have so held.

Other courts of appeals of other circuits, passing upon similar contracts in states having similar laws to the State of Illinois, have held that these contracts are written contracts and must be so interpreted when considering a plea of the Statute of Limitations.

In *Cleapor* v. *Atlantic, B. and C. R. Co.,* 123 Fed. 2nd 374, the Court there stated, at page 376, that it was a written contract.

Also in *Howard* v. *C. B. & Q. Ry.,* 146 F. 2nd 316, at page 320, the Court there recognized practically an identical contract as being a written contract.

In *Union Pacific R. Co.* v. *Olive,* 156 F. 2nd 737, wherein an action on a collective agreement was challenged by a plea of the Statute of Limitations, at page 738, the Court held the same to be a contract application or liability founded upon an instrument in writing.

This same interpretation was also given similar contracts in the case of *Sanders* v. *L. & N. Ry. Co.,* 144 F. 2nd 485.

C.

The Decision of the Court of Appeals Conflicts With the Decisions of the Supreme Court of Indiana and Illinois.

The case relied upon by the Court of Appeals, namely, *Kordewick* v. *Indiana Harbor Belt R. Co.*, C. C. A. 7th Cir. (1946), 157 F. 2nd 753, is based upon the Illinois cases that the Court has misinterpreted, because in the case of *Novosk* v. *Reznick*, 323 Ill. App. 544, the truck driver who had had no duly constituted, elected representative enter into any negotiated contract for and on his behalf, as we have in the instant case, sought pay by a ruling of the W. P. A.; there was no privity between the truck driver and the W. P. A., only the W. P. A. and the employer. These are not the facts in the instant case. The Court pointed out that it is not necessary under Illinois law that a person to be benefited by a contract be named therein if he is otherwise designated, or he may be even one of a class of persons if the class is sufficiently described or designated.

So, too, in the case of *Conductors Benefit Association* v. *Loomis*, 142 Ill. 560; the Supreme Court of Illinois there held that a written contract is one which in all its terms is in writing, and the Court passed upon the fact that the certificate of membership and constitution and by-laws could constitute a written contract, but in that case the certificate merely stated that the injured is a member of the association and contains no promise to his wife or widow. In the instant case, the written contract was signed by the officials of the Brotherhood, for and on behalf of the named class and ostensibly and obviously for the benefit of the Petitioners in the instant case.

This enunciation upheld in 17 C. J. S. 519 Sub. Par. (d).

It is respectfully submitted that the Court of Appeals

in *Economy Fuse & Mfg. Co.* v. *Raymond Concrete Pile Co.*, 111 F. 2nd 875, at p. 878, states that it is not the law of Illinois that a cause of action upon a written contract is taken out of that class by reliance upon evidence of surrounding circumstances, and we respectfully submit that is the most we intended to use in the instant case.

Illinois also recognizes in the case of *Emma Jones, et al.* v. *Supreme Lodge Knights of Honor*, 236 Ill. 113, in an action on a benefit certificate issued by a society of which the deceased was a member, that the application, the constitution and by-laws, and certificate constituted a contract. They held that these evidences were in writing and that no verbal testimony was necessary to establish the contract. This was later affirmed in *Electrical Contractors' Association of the City of Chicago* v. *A. S. Schulman Electric Co.*, 391 Ill. 333, which we believe is the latest expression in Illinois on this subject. In the instant case we contemplate introducing the application for memberhsip in the Brotherhood of Railroad Trainmen, the membership certificate, by-laws and constitution of the Brotherhood, and the written collective bargaining agreement under which the employees have worked for the Respondent for many years, and we reiterate that this constitutes a compliance with the Statute of Frauds, and that the Statute of Limitations pertaining to oral contracts does not apply.

In the case of *J. I. Case* v. *N. L. R. B.*, 321 U. S. 332, at p. 335, the Court recognizes that after the collective trade agreement is made, the individuals which will benefit by it are identified by individual hirings and this Court also finds in the next paragraph that the employee becomes entitled by reason of the Labor Relations Act, which we submit in this instant case, gives the same rights as the Railway Labor Act, somewhat as a third party beneficiary to all benefits to the collective trade agreement.

Conclusion.

This Court is well aware of the prolonged negotiations that are a natural concomitant of bargaining between employers and employee representatives. They are also aware of the extreme delicacy in the relations that exist between the two, and they are aware of the conscientious and painstaking handling of these matters by Congress and the National Railway Labor Act, wherein they so assiduously sought to set up a means of allaying interruptions to commerce and provided for peaceful settlement of unavoidable differences. This Court in many of the cases submitted to it has been most conscientious in its endeavor to preserve the obvious intentions of Congress by adhering to the spirit, as well as the letter, of the Railway Labor Act. Now all this is held for naught. All negotiations, legislation and decisions are annihilated if these contracts are not given their rightful place, for well this Court knows, the tedious, long negotiation and delay that prevents acrimonious action while negotiating to arrive at a peaceable settlement. If then these employees only have a nod of the head and not even a wisp of paper, then why should they go through the laborious, long drawn out procedure provided by the Railway Labor Act. Then, either let them go to Court immediately to avoid the deadly axe limitations, or let them strike, and tie up the nation's arteries. The decision is in your hands.

Respectfully submitted,

JOHN H. GATELY,
Counsel for Petitioners.

JOSEPH F. BURNS,
Of Counsel.